

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
CLETE L. BOYLE, CECELIA BOYLE }
and HILDA SYLVIA BOYLE }

Appearances:

For Appellants; Glenn C, Ames and Chester A.
Price, Jr., Attorneys at Law

For Respondent: A, Ben Jacobson, Associate Tax
Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on protests to proposed assessments of additional personal income tax against Clete L. and Hilda Sylvia Boyle in the amounts of \$2,418.32, \$2,994.56, \$2,603.21, \$1,642.56 and \$1,371.88 for the years 1949, 1950, 1951, 1952 and 1953, respectively, and against Clete L. and Cecilia Boyle in the amounts of \$466.95 and \$408.94 for the years 1954 and 1955, respectively,

The issue presented is whether Appellants were residents of California during the years 1949 to 1955, inclusive.

Clete L. Boyle, hereafter referred to as Appellant, was born in Pennsylvania in 1892 and became a resident of Michigan in 1916. He is a metallurgist and chemical engineer who acts as a consultant in those fields. In 1922 he formed the Industrial Chemical Products Company in Detroit. Throughout the period in question he was the president and principal stockholder of this company, which is the primary source of his income. He owned a home in Michigan from 1926 until 1932, when he separated from his first wife, Elizabeth. He then obtained an apartment at the Detroit Athletic Club, which he occupied until his marriage to Hilda in 1947. Since then he and his wife have lived at the Whittier Apartments while in Detroit. Their apartment was relinquished each year during the winter and spring months while they were in California. He is a member of two golf clubs and belongs to a number of social, business and professional organizations in Michigan. He votes, files Federal tax returns, pays intangible taxes and has his automobiles registered in Michigan. He has not

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retired from business activities and retains active management of his company.

In 1937 Appellant purchased a house on five acres of land in Encino, California, and began to spend a portion of each winter there. The original house burned down in 1946 and was replaced with another small house in that year. In 1949 he constructed a more substantial home on his Encino property, at a cost of \$28,000. The other house on the property was occupied by a caretaker. He opened savings and commercial bank accounts here in 1949. Hilda died in 1953, and was buried in California. On Hilda's death certificate, Appellant stated that he and she were residents of California. For California inheritance tax purposes her domicile was determined to be in Michigan. In 1954 he married Cecilia, who was then a California resident, and stated on the certificate of marriage that he was a resident of California. Appellant is an avid golfer and belongs to several golf clubs in the Los Angeles area. In his applications for membership, he stated that he was a resident.

In each of the seven calendar years here in question the aggregate time spent in California by Appellant ranged from four to seven months. The remainder of his time was spent in Detroit, Michigan. As estimated by the Franchise Tax Board, Appellant was in California more than six months in three of those years. Appellant claims, however, that his time here exceeded six months in only two of the years in question. He states that in 1950 his return to Michigan was delayed because of moving into the newly completed home. In 1951 his time in California was extended to a maximum of seven months and five days by the illness of his wife. While in California Appellant maintained constant contact with his business in Michigan. At least once each winter he returned to Detroit to take care of business affairs.

Section 17014 (formerly Section 17013) of the Revenue and Taxation Code provides that "resident" includes every individual who is in this State for other than a temporary or transitory purpose. Regulation 17013-17015(b), Title 18, California Administrative Code, states that "The underlying theory of Sections 17013-17015 is that the State with which a person has the closest connection during the taxable year is the State of his residence. Consequently, where a person's time is equally divided between California and the State of domicile, he will not be held to be a resident of California."

Measured by the standard of this regulation, the facts before us fall short of establishing that Appellant was a resident of California during the years in question. Michigan was, and for many years past had been, his place of domicile.

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His financial, professional and social interests were there. He actively engaged in and controlled the management of a substantial business in Detroit. It was there that he carried on his professional activities as a consultant in the fields of metallurgy, engineering and chemistry. In Michigan he belonged to and actively participated in the affairs of business clubs and professional societies.

Appellant engaged in no business activities in California. He accepted no consulting work here and was not licensed in this State to practice his profession of chemical engineering. He belonged to no business, professional or social organizations in this State, other than local golf clubs. Although Appellant stayed in California slightly longer than half the year in two or three of the years in question, the average time spent here per annum was less than six months.

Appellant explains his statements that he was a California resident in applications for membership in local golf clubs, in Hilda's death certificate, and in the certificate of his marriage to Cecelia, as having been made because it then appeared the simpler course to pursue. Any adverse inference arising therefrom, as well as any presumption that he was a resident here because of the maintenance of a permanent place of abode in this State, has been overcome by uncontroverted evidence that in each of the years in question Appellant was a seasonal visitor whose presence here was for a temporary and transitory purpose,

During her lifetime the presence in this State of Hilda Boyle coincided, with minor exceptions, with that of her husband. The same is true of Cecelia after her marriage to Appellant. We are of the opinion, accordingly, that Hilda was not a resident of California during any of the years 1949 through 1953 and that Cecelia was not a resident here during 1954 or 1955.

O P I N I O N

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests to proposed assessments of additional personal income tax against Clete L.

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and Hilda Sylvia Boyle in the amounts of \$2,418.38, \$2,994.56, \$2,603.21, \$1,642.56 and \$1,371.88 for the **years** 1949, 1950, 1951, 1952 and 1953, respectively, and against Clete L. and Cecelia Boyle in the amounts of \$466.95 and \$408.94 for the years 1954 and 1955, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 16th day of December, 1958, by the State Board of Equalization.

George R. Reilly, Chairman

Paul R. Leake, Member

J. H. Quinn, Member

Robert E. McDavid, Member

Robert C. Kirkwood, Member

ATTEST: Dixwell L. Pierce, Secretary